

VILLAGE OF MONROE
ZONING BOARD OF APPEALS
PUBLIC HEARING
September 13, 2022
Via Zoom

PRESENT: Deputy Chairman Zuckerman, Members Czerwinski, Gilstrap, Margotta, Alternate Member Doherty, Board Attorney Naughton, Assistant Building Inspector Proulx, and Building Inspector Cocks.

Absent: Chairman Baum

Deputy Chairman Zuckerman called the meeting to order at 8:09 pm with the Pledge of Allegiance.

Deputy Chairman Zuckerman appointed Alternate Member Doherty to be a voting member.

Applications:

Continuation of the application of W.C Lincoln Corp. for review of administration decision or order of the Building Inspector in order to issue a Building Permit. The property, which is the subject of said action by the Board, is located in the SR-10 Zoning District and is identified as Section: 211 Block: 1 Lot: 1 on the tax map of the Village of Monroe and is also known as the address (no#) Sunset Heights.

Deputy Chairman Zuckerman asked who was representing the applicant. Attorney Joseph Haspel stated he was representing the applicant. Attorney Haspel stated it was an appellant not an applicant for the purpose of this matter. Attorney Haspel stated also present was the president of WC Lincoln, Mr. Jacobowitz.

Deputy Chairman Zuckerman stated that while the COVID restriction that allowed for Zoom meetings ended yesterday and was no longer in effect, where there still disaster emergency provisions in effect by the State of New York that would allow Zoom meetings due to Monkey Pox and Polio. These emergencies would impair the ability of the Board to hold an in-person meeting.

Deputy Chairman Zuckerman asked Attorney Haspel if he would like to make a statement. Attorney Haspel stated he is going to assume that everyone on the Board knows more about the prior proceedings, more than he does, as he is filling in for Attorney Dickover who could not make it to the meeting. Attorney Dickover wrote a letter dated August 29, 2022 addressing the issues that Attorney Haspel believes tonight's meeting is to address. Attorney Haspel stated that when Deputy Chairman Zuckerman stated the property he stated the property on the Tax Map designation he found it odd, as the Tax Map designation is for a group of lots. He feels it would be more accurate to state it as Lot 58 which is part of the group of lots. He is not sure if there has ever been an application for Lot 58 within the sub-division. That being said it is Attorney Haspel's understanding that at the last hearing, it was brought up to the appellant, that back twenty years ago there was a similar process for what he believes a different lot. Attorney Haspel was not able to determine the Lot number from the documents he read in regards to the proceedings twenty years ago. He stated that appeal was upheld by the New York State Supreme Court. There were two proceedings: The first was a decision by the Building Inspector not to issue a building permit because at that point in time there was an eminent domain proceeding, because of that it was held to be inappropriate to address this proceeding. Later there was a proceeding that was presented based upon the sole issue of vested rights. My review of the documents was that Attorney Dickover did argue vested rights and it is upon that argument that the Board stated there was vested rights presented on a parcel in this sub-division

that was rejected by this Board back in 2003 and that rejection was affirmed by the New York State Supreme Court and recorded in Orange County New York. After hearing this Attorney Dickover researched the matter, his finding of that research was stated in his August 29, 2022 letter. The letter raises the fact that this property is entitled to a building permit based upon Local Law Section 200-64. Attorney Haspel feels this Local Law needs to be parsed and is applicable to this proceeding. Attorney Haspel stated he would parse out that provision at this time to determine whether a building permit should be authorized under this Local Law. Attorney Haspel does not believe this argument has ever been presented.

Attorney Haspel read the provision. The provision states that a vacant lot in a residential zone, which is what lot 58 is, separated from any other land in the same ownership and non-compliant as an area whether or not the lot is in or part of a sub-division plot. According to Section 200-64D(1) you have a vacant lot which is separated from any other land, which lot 58 is, it is under the same ownership and is non-compliant in area which is what we have. This is a lot that seems to be sub-standard to current standards. SR-10 zoning area calls for 100 feet of frontage and this lot only has a seventy-five feet of frontage for this lot.

Attorney Haspel proceeded to state that when he first reviewed that he was stuck on the word “separated” and whether it applies here. As per the Zoning Code guidelines if in doubt use the Webster Dictionary. According to Webster Dictionary, when “separate” is used as an adjective it is defined as “existing by itself”. Lot 58 exists by itself which has been approved and is part of a filed sub-division plat.

What we have here is a lot that is separate, on its own, under the same ownership, non-compliant as it does not meet current standards. The lot is sub-standard because it only has 75-feet of frontage and the current standard is 100-feet of frontage. Whether or not it is part of a sub-division, it is on a plat approved by the Planning Board. This lot was not approved by the Planning Board as there was no Planning Board in 1909 when the sub-division was approved. The Local Law stated this does not matter, as it says whether or not the plat was approved by the Planning Board and filed with the county clerk. This was in fact filed with the county clerk. Continuing with the Local Law it should have a lot width of at least fifty-feet. This lot has a lot width of seventy-five feet and maybe used as a single family detached dwelling. The application is for a single-family dwelling as long as the use complies with 200-19 which the request does compile with 200-19. This request fits the definition on all four criteria in the Zoning Code that indicates we have a right to build on this non-conforming lot, we don't believe that the Building Inspectors rejecting of a building permit was appropriate. That is our argument, does anyone have any questions?

Deputy Chairman Zuckerman stated he would like to get to the letter dated August 29, 2022. The letter states that Attorney Dickover took into consideration the fact that there was res judicata as far as the 2003 decision for vested rights is concerned and if that was the only issue the resolution might be concluded. But, the letter states Local Law 5-2017, amended 6/13/2017, renders the decision from 2003 no longer applicable. Deputy Chairman Zuckerman wanted it noted for the record that the particular Section 200-64D was in the 1999 code under a different number and the only difference between the law in 1999 and the law in 2017 is that it had to be amend because the last line says it has to comply to Section 200-19 and in the re-numbering 200-19 became 200-26 and that is the only change in this section from the 1999 code, which code Section was before the ZBA and the New York State Supreme Court in their decisions in 2003. Attorney Dickover's letter is incorrect in stating that there was a monumental change when in fact the only change was the re-numbering. There is nothing new this is still part of the res judicata. The other issue we face here is the fact that as far back as 1991 the requirement was for lot width in SR-10 to be one-hundred feet. These issues should have been resolved at the initial proceedings. There is nothing new in the letter to change the determination that res judicata is in effect.

Attorney Haspel stated when he reviewed Attorney Dickover's letter, he felt that also, but while you are mostly right that the change to the Local Law in 2017 was not substantial. There are two other things, 1) whether we are dealing the same issues and we are not because we are not dealing with the same parcel of property, and 2) the 2003 proceedings were limited to the question of vested rights. Attorney Haspel does not believe there is res judicata in the ZBA. If this Board choose to use res judicata for its decision, he would assume that it will be a determination for the court. The court would have to decide if res judicata exists and to show that it would have to be the same facts and the same presentation of law and it is not. Here we have a different parcel of land and a different argument. Attorney Haspel stated that he reviewed if 200-64 in any form was addressed by either the ZBA or the New York State Supreme Court, and it was not. Attorney Haspel rejects the position of res judicata on multiple grounds. If the Board wants to advocate its role to determine the meaning of the statutes, which it is, this Board is supposed to determine whether a building inspector has properly determined a Local Law.

Board Attorney Naughton stated there were a couple of things she wanted to address. Res judicata does apply to ZBA's. This has been for a very long time and there are a number of cases that say the doctrine of res judicata applies to quasi-judicial determinations, including to Zoning Boards. Attorney Haspel stated not at this level but in the courts. Board Attorney Naughton stated res judicata applies to this Board and they can make a determination based on res judicata using the court decisions that the courts have said that they could.

Board Attorney Naughton stated the issue before this Board is they are presented with an appeal of the decision of the Building Inspector's determination. That means this Board stands in the shoes of the building inspector and makes the decision they think ought to have been made in that instance. Right now, this Board has not been asked to make a determination of anything less you want to include that as part of this application. This Board is only looking at the facts before it, and the bulk tables, and everything that is applicable to make this determination. Board Attorney Naughton asked Attorney Haspel if they were expanding the application to include an interpretation of the provision of Local Law Section 200-64? Attorney Haspel stated he thinks it is implicit and if we have to the answer it is yes and he would argue it is already there. Board Attorney Naughton stated that in that case the Board can continue with this application as it came into the building inspector in terms of the history of the application, the lot width, and whether or not it would comply with ability the for a building permit to be issued under Local Law section 200-64, whether or not this property is a vacant lot in a residential zone, separated from any other land in the same ownership. Attorney Haspel stated that using the definition of the Webster Dictionary, that is correct.

Attorney Haspel thinks Board Attorney Naughton stated it accurately. Attorney Haspel feels this Board must address Local Law section 200-64 to make a determination and not simply site a similar application twenty years ago, which was not based on the Local Law and may be based on a separate piece of property. Attorney Haspel stated he has seen nothing that indicates we are dealing with the same lot which would support the denial of a building permit.

Deputy Chairman Zuckerman stated it is the Board's position that there is only one lot because there is no section, block, lot (SBL) number associated to lot 58. The SBL is for the under one SBL which is for the whole area not just lot 58. Attorney Haspel stated that is clearly wrong, tax lot numbers are not legal descriptions of property. Legal description is what is set forth on the plat plan on file.

Board Attorney Naughton clarified what Deputy Chairman Zuckerman was saying. The 1909 plat you are referring to is no longer valid. Therefore, there is only one lot which is SBL 211.1.1. Attorney Haspel does not understand as he has never heard of a filed map being invalid. Board Attorney Naughton stated it is a filed map but the appellant does not have any vested rights to those lots. Therefore, those lots do not actually exist which is based on the prior New York State Supreme Court decision. Attorney Haspel stated that is not what the court decision says. Attorney Haspel stated the court decision says that you don't have vested rights and you have to go through a process. Board Attorney Naughton stated she is very familiar with the decision. Attorney Haspel stated he would not get into that argument here.

Attorney Haspel stated at this point in time we do have a filed map and that map sets forth lots. What is odd here and it seems to be indicative is what the Village seems to have wanted to do when it changed it's zoning was to stop lots of a certain size and if a Village wants to do that they create a Local Law that merges sub-standard lots owned by people that are adjacent. In this case that was not done and what was done is have this Local Law which goes back to about the same time they created the zoning. The Local Law did not merge smaller lots by the same owner, in this case the Local Law states a sub-standard lot has rights of its own if it meets the definition in Local Law 200-64. That was not done here. If you are saying there is no sub-division because of a zoning change, I will be gladly litigate that. The Local Law is there to help properties like this one.

Board Attorney Naughton asked if there were any other arguments Attorney Haspel would like to make. Attorney Haspel stated he is hearing that the Board does not care about the law and they do not care about the Local Law, they don't care about the language of the law. Board Attorney Naughton asked Attorney Haspel to stop.

Attorney Haspel stated this argument has never been applied to this issue and this is not the same lot as the last case.

Deputy Chairman Zuckerman polled the Board members for questions. There were no questions from the Board members.

Mr. Jacobowitz, President of W.C. Lincoln, asked if there were any laws indicating filed maps and if a filed map can expire. Attorney Haspel stated not to worry about that. Board Attorney Naughton stated this was a vested rights issue and he should talk to his lawyer off line in regards to that.

Deputy Chairman Zuckerman asked if there was anyone from the public who would like to comment. There were no public comments.

Board Attorney Naughton stated no GML was needed for this item. This item is classified as a SEQRA type 2 action and no further action is required.

On a motion from Deputy Chairman Zuckerman and seconded by Member Margotta it was resolved: **to close the public hearing.**

Aye – 5

Nay – 0

Absent – Chairman Baum

Board deliberation commenced.

Member Gilstrap stated he has a problem with the lot and considers 211.1.1 to be one lot so he is opposed to the idea that lot 58 exists.

Deputy Chairman Zuckerman stated that Local Law section 200-64D cannot be applied here as 211.1.1 is owned by the same owner. Local Law section 200-19 is irrelevant as the property is all under one ownership and the bulk requirements were not met. Deputy Chairman Zuckerman does not feel this action falls under those Local Law sections.

Member Czerwinski stated if we are going to go back to the 1909 map it is a problem for him as the owners have had over one-hundred years to do something with the property and any vested rights that came with the property has long been abandoned. Member Czerwinski stated there is only one lot and res judicata applies.

On a motion from Deputy Chairman Zuckerman and seconded by Member Margotta it was resolved: **that the application of W.C. Lincoln that appealed the interpretation of the Building Inspector be dismissed on the grounds of res judicata.**

Aye – 5

Nay - 0

Absent: Chairman Baum

Attorney Haspel asked if a formal decision will be written. Board Attorney Naughton stated yes, a formal decision will be drafted and adopted at the next meeting which is October 11, 2022.

August 9, 2022 minutes:

On a motion from Deputy Chairman Zuckerman and seconded by Member Cezerwinski it was resolved: **the August 9, 2022 meeting minutes be approved.**

Aye – 3

Nay – 0

Abstain: Members Gilstrap and Margotta

Absent: Chairman Baum

New Business:

There is a new application for 97 Fredrick Drive on the agenda for October. There was a matter for this address before the Board in September 2019. The members would like a copy of those minutes prior to the meeting.

The Board recognized the selection of Kelly M. Naughton as an upstate New York “super-lawyer” in the fields of land use and zoning. Alternate Member Doherty, with the agreement of the other members stated the Board was lucky to have her as it’s Attorney.

On a motion by Member Margotta and seconded by Member Gilstrap it was resolved: **the meeting be adjoined.**

Aye – 5

Nay – 0

Absent: Chairman Baum